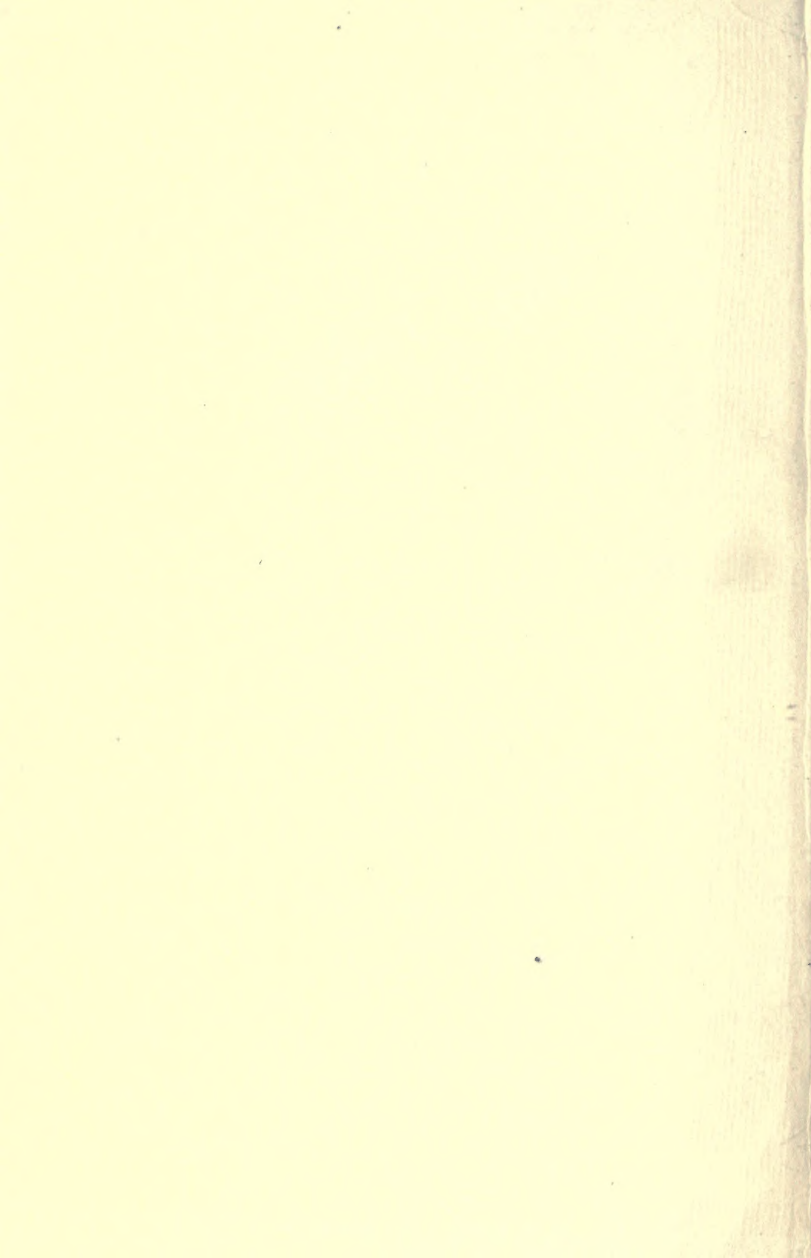
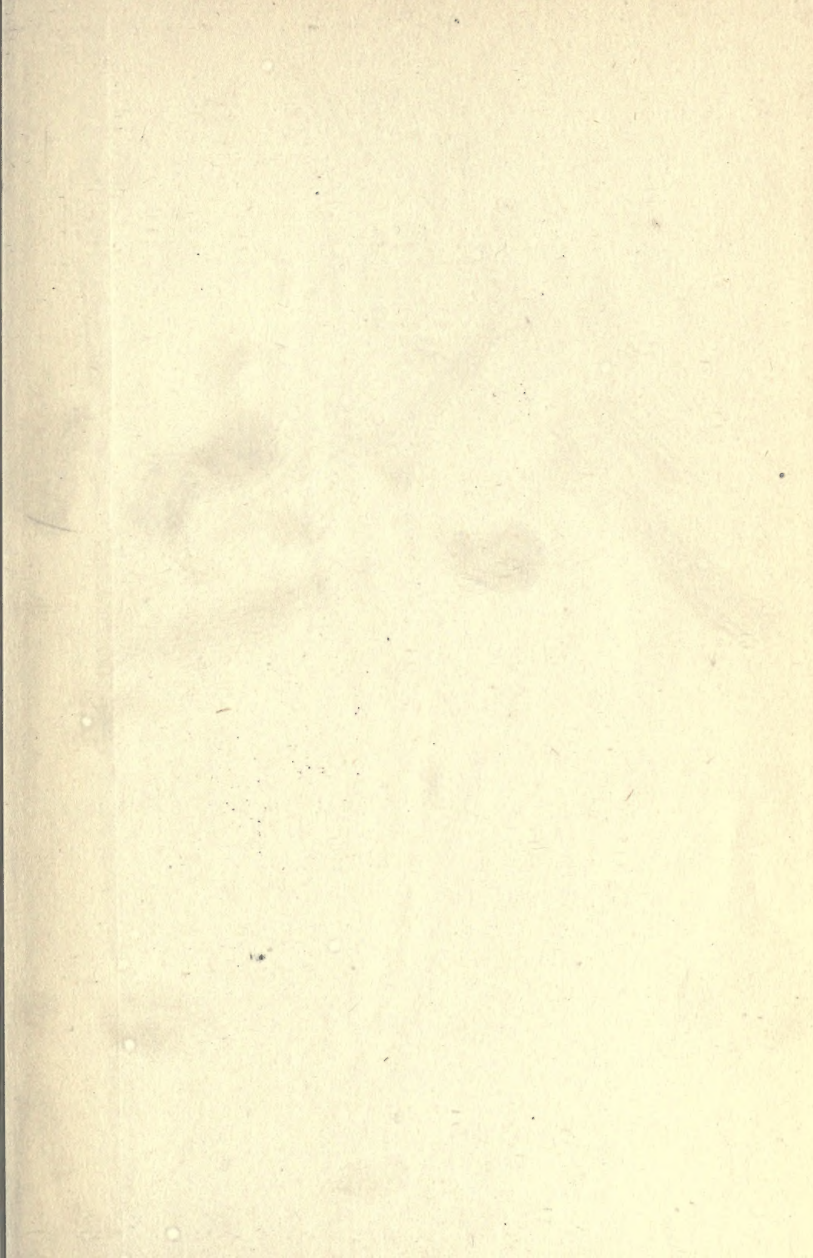


# The British Empire

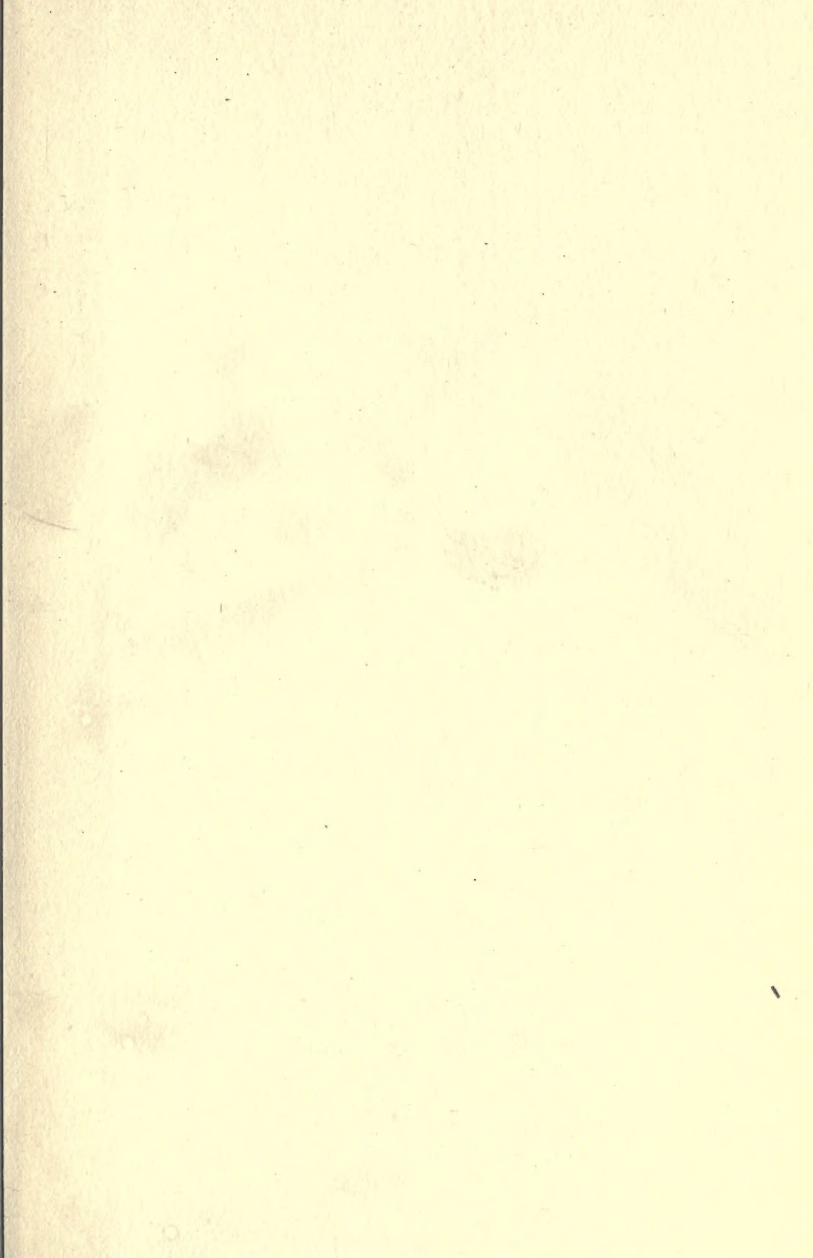
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George Burton Adams













# The British Empire and A League of Peace

Together with an Analysis of

## Federal Government

Its Function and Its Method

By

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## PREFACE

THE first of the two essays here published together has been somewhat widely circulated in pamphlet form, the first edition of which appeared in March, 1918. The second was written for the Foreign Press Bureau of the Committee on Public Information for use abroad and was completed in November, 1918. In writing it no attempt was made to give a scientific treatment of federation, but the practical purpose of explaining its method of operation to those not familiar with this system of government determined the form and substance of the essay.

G. B. A.

NEW HAVEN,  
*February, 1919*



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The British Empire and  
A League of Peace



## THE BRITISH EMPIRE AND A LEAGUE OF PEACE

### I

THERE are at present before the world only two possibilities for a league of peace. One is the League to Enforce Peace of which Mr. Taft is President—not necessarily that particular plan, but it may be taken as typical of all plans based upon treaties or definite agreements defining the objects and methods of the league and marking out the scope of its action. The other, created not by a series of defining clauses but by common ideals and purposes, with only the simplest machinery, is an alliance of all the English-speaking nations and of such other like-minded nations as might be willing to join them. It is not the purpose of this paper to advocate one of these plans as opposed to the other. There is no real opposition between them. A common understanding among the English-speaking nations could exist together with a more formal league and very possibly will, if such a league is formed. Here may be pointed out merely one advantage of the less

formal plan. There can be no doubt but that a league based upon common ideas of policy and common standards of international right and wrong will possess far higher flexibility and freedom of judgment and action. Definitive treaties however free must restrict by the very fact that they create and define. I wish rather here to show that an alliance of ideals and common standards is now almost in existence and that very little needs still to be done to give it effective form.

All the English-speaking nations except one belong now and have always belonged to a single political organization, the British Empire. The United States is not a member of this organization. But its area and population, its developed resources and capitalized wealth, make it necessary to the league. On its side it is just beginning to awaken to the close similarity in ideals and standards of international conduct which exists between it and the other members of the group. The general recognition of this similarity, which cannot long be delayed, is the essential and necessary foundation of a common policy. Such an alliance must be largely tacit and informal, made very likely by a common



understanding rather than by a treaty. It must grow out of natural conditions and not be artificially made. Therefore there must be among all its members a very widespread agreement upon the ultimate controlling motives of action and a common conviction as to the objects to be sought, and these agreements and convictions must be so well known by all that they are securely trusted. If this knowledge and confidence cannot be obtained, we must fall back upon a league artificially made by treaty as the best we can do, for without them no bond of action which has its roots in living forces is possible.

A discussion of the means of reaching this understanding will also be omitted. This may be done in confidence that the course of events will bring it about, and has already largely done so, without the necessity of argument. During the war millions of our young men and women have been brought into close contact with our Allies, especially with those who speak English. We have stood with them in places which try the metal of which men are made and under conditions which strip off all disguise and reveal unmistakably character and motive.

We have learned to know one another in a few months as would not be possible in a generation of the slow times of peace. Now that the war has ended with victory the conferences that will be necessary to formulate a just settlement will reveal the international standards and purposes of nations, the national mind and will, beyond the possibility of mistake. And nobody among us who reads and thinks at all is going to escape the conclusions which will be formed. Whoever has studied the growth of opinion in the English-speaking world during the last twenty-five years may leave this difficulty of bringing about the necessary understanding of one another to the work of time with perfect confidence as to the final result.

Another difficulty—to find the proper form of organization—is far more serious. I have said that all the English-speaking nations except the United States are now members of a common political organization, but it is not an organization of the right kind. It is still in political form an empire. That is, in the field we are concerned with, the field of international relations, one of the nations makes decisions and determines policy, and

the others have no recognized way of influencing the determination which they assist in carrying out. So long as this fact continues, one of these nations rules in this field to the exclusion of the others, and so long the organization is imperial, even if the sovereign is a parliament and not a man. There is beginning a fashion of speaking of the British Commonwealth of Nations instead of the British Empire, but the new name denotes in international relations an aspiration for the future rather than something at present really true. So long as each nation is not allowed its proportionate share in making decisions, nothing exists which can be truly called a commonwealth of nations, nothing which is in any proper sense a federation.

Plainly in this field a reorganization is demanded, but the problem of forming a workable union in foreign affairs for the British Commonwealth of Nations is in all essentials the problem of forming a workable league of peace for all English-speaking nations. If there is ever discovered a workable form for one of these groups, it will be a workable form for the other, for the problem is fundamentally the same in each case. So

far as this problem concerns the British Empire men have worked upon it consciously, with many differing proposals and much discussion, for half a century. Indeed it is a hundred and fifty years since the first suggestion for its solution was made, though with somewhat less consciousness of the exact problem to be solved. But the plans proposed have been exclusively along a single line. The task at which men have labored has been to find some means for the representation of the outlying Dominions in a central parliament of the Empire, either in the existing parliament of the British Isles or in an imperial parliament. Even the latest proposal of an imperial organization, the most carefully elaborated that has ever been presented and based upon a very wide collection of opinions, insists upon the necessity of an imperial parliament.

It is not strange that a central parliament should seem to British students of the problem indispensable. The essential feature of the British system, the control of the executive by the legislature through a cabinet of responsible ministers, is so successful in practice and so thoroughly democratic, allowing

the quickest action of public opinion upon the central government of any political machinery yet devised, that it may well seem that no British government can exist without it. And yet there can be no doubt but that such a conclusion overlooks three important facts: First, that the alliance to be formed is a commonwealth of nations, not a commonwealth of provinces; second, that within a commonwealth of nations internal legislation, making laws which are binding upon all the members alike, is not merely out of place but dangerous; third, the proposal overlooks the experience of the United States.

I. To call the alliance to be formed even within the British Empire a commonwealth of nations is not a misnomer. The five Dominions usually counted, Canada, Australia, New Zealand, South Africa, and Newfoundland, are practically now independent nations so far as the legislation of any imperial parliament is concerned. This is true notwithstanding the continued survival of the signs and forms of an earlier legislative dependence which was once more real. Enabling acts are still sometimes necessary;

colonial acts may still be disallowed; the British Parliament may still legislate in regard to some matters of intercolonial trade; appeals still lie under certain conditions from colonial decisions to the Judicial Committee of the Privy Council in London. But it is a commonplace of knowledge throughout the Empire that all the survivals of that earlier dependence which still exist are formal and technical rather than real. So true is this that a student of imperial affairs has declared that the Dominions have been granted every item of self-government upon which they have insisted, including the regulation of immigration and of commercial relations, and that if anything has not yet been granted them it is because they have not insisted upon it. It is common knowledge that an attempt by the British Parliament to impose legislation upon these Dominions without their consent is an impossibility, and that if legislation upon an imperial, intercolonial question should again be necessary, it will be adopted with as full consideration of colonial opinion as if adopted by the colonies themselves. As a matter of fact all signs of the past generation indicate that such agreements



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upon intercolonial questions as may be necessary in the future will be reached by the methods in use among independent nations, negotiation and conference, rather than by legislation from above. The first step towards a British federation is a clear recognition of this fact with all that it logically involves, and the necessary first step towards forming an alliance of the English-speaking nations for peace is also a full recognition of the fact that it is to be formed, not between two independent nations, England and the United States, to which are attached certain dependencies, but between seven nations who stand on the same footing in relation to their international interests and who are to be equal partners in due proportion in all that is done.

It must be carefully observed that the independence of a sovereign state is not proposed for the members of the British Empire. It is not necessary that they should have the power to make treaties opposed to the rest of the Empire or to make separate war and peace. All that is implied is independence within the commonwealth which means no more for each than a position

of exact equality in such questions with every other member of the commonwealth. Two things appear indispensable to such an independence: one is an equal share, an effective voice and proportional determining influence in all decisions which settle the policy of the commonwealth; the other is security that when treaties and other relations with foreign states concern one member exclusively that member shall have the final voice, not of course in disregard of the other members but as the judge of last resort. So much independence as this last has already been practically conceded in some cases, as between Canada and the United States, for example, but it should be made universal and constitutional. This is the kind of independence which already exists in regard to internal questions, and no revolutionary change is demanded to put the Empire as it now exists upon this basis in foreign affairs.

2. If it be admitted that the members of an alliance, whether a British Imperial Union or an English-speaking alliance for peace, are independent nations, it follows that internal legislation is not a natural consequence. It could undoubtedly be made possible by the

terms of the union, but it would have to be artificially provided for by special enactment. The natural method of settling internal questions would still be negotiation and conference, rendered no doubt especially easy by the existence of the alliance, but not changed in character. A heavy burden of proof rests on those who would create an imperial parliament for real legislation where none now exists. And that is not the way of safety. The greatest danger in any federal union is the temptation to impose legislation upon a local unit for which it is not ready, or to which it is strongly opposed. Within the British Empire the temptation is already at hand in the widely divergent views among the different units on the subject of intercolonial migration, and the danger of uniform legislation on the matter is unmistakable. The best result, the least dangerous to the union as a whole, which could follow such legislation, where feeling is strongly engaged, would be that which has followed the violation of the principle of federal government in the Fifteenth Amendment to the Constitution of the United States, local nullification. Experience shows

that even such subjects as internal commerce, involving the vexed question of protective tariffs, and naturalization are best left to local legislation. Why then create the risk? The natural and safe method is local independence and negotiation under the influence of common imperial public opinion, and the general principle which should be clearly recognized is that the primary and most essential object of a British federation or of an English-speaking alliance is not internal regulation but external unity.

3. The belief that an imperial parliament is necessary overlooks the experience of the United States. Avowedly one of the chief reasons, if not the chief, for considering an imperial parliament necessary is to secure the responsibility of the executive in the British way. Responsibility secured in some way is a necessity. No constitution, no alliance or federation, no common understanding even, which disregards the matter can hope to obtain the sanction of democratic nations. But it does not follow that the British method of the responsible ministry is the only method of enforcing executive responsibility, or that any mechanical method need be provided.

The British method of cabinet responsibility goes back to a time when the legislative assembly was still the best means of gathering and focusing public opinion. It is founded wholly on the theory that through the representatives elected by the people the will of the nation can best be declared and brought to bear upon the executive. In the eighteenth century when the responsible ministry was invented, this was still the case. It is probable also that the American Congress has departed farther from this ideal of representative government than any other legislative assembly, but it merely stands in an advanced position on the road which all are following. In this fact consists a part of the value of American experience as a guide. It would be I think difficult to find a student of public affairs in this country who believes that the public opinion of the United States is best ascertained through Congress, or that in the matter of general policy it is in ordinary cases brought to bear upon the executive by means of Congress. Such a student would be more likely to maintain that the opposite of this is true, and that in many cases during the last twenty years the execu-

tive has brought the majority opinion of the country to bear upon Congress. In reality while the President undoubtedly makes use of the knowledge of individual members of Congress, he has other and better means of finding out the judgment of the nation, means unknown to the eighteenth century and increased almost miraculously in the nineteenth. On the morning after President Wilson's speech of February 3, 1917, on submarine warfare, the *New York Times* laid before its readers an impressive collection of opinion upon it from all parts of the country, of fifty-nine newspapers, including seventeen German-language papers, of sixteen governors of states and of two state legislatures, and of many men of prominence, including a number of leading German-Americans.

In England itself in extremely important matters the public opinion of the nation has been ascertained and faithfully acted upon with no formal parliamentary action. This has even been done in the making and unmaking of cabinets. Twice since the war began the cabinet has been reconstructed, once involving the fall of the Prime Minister, with



no preliminary declaration or mandate of parliament whatever. But, notwithstanding the comment of certain extreme radicals, it would be absurd to maintain that the present ministry of Mr. Lloyd George did not take office because of a public demand, or that it could maintain itself for a moment if it lost public confidence, whether parliament registered the change or not. As a distinguished English publicist said at the time: "In the present instance the House has not been defied, but it has not been consulted. Mr. Lloyd George draws his strength from outside the walls of parliament; he owes his elevation to a kind of informal and irregular, but unmistakably emphatic plebiscite. The House of Commons did not make him premier; it is doubtful whether it could unmake him." The truth is that parliament is no longer a channel through which the nation communicates with the government or declares what the government could not otherwise know, nor an organ for the formation of a national judgment. Parliament has no longer any peculiar access to the springs of opinion, but itself finds out what the national judgment is just as the executive does, or the

editor of a great newspaper, or his subscriber in a remote hamlet. Here again it must be observed that this is not an assertion of the influence of the press in forming public opinion under a democratic government. That is a much larger and more difficult question, and an entirely different one. Here attention is merely called to the modern function of the press as a collector of news and opinion; not as leading opinion or expressing its own opinion, but as showing what the public thinks and decides.

When this has been said, however, the entire subject of executive responsibility has not been considered. It is still necessary that the public should be confident that the executive will not carry out a policy opposed to its will. Here again the experience of the United States is enlightening, for it shows how a living democracy operates in just this matter as supplementing and modifying the written law. The President is supposed to appoint his cabinet to suit himself with no formal responsibility for his selections, and no doubt presidents have shown considerable idiosyncrasy in their appointments and considerable power of resistance to popular

demand for changes in their cabinets. There have been so many cases, however, within comparatively recent memory, from Alger to Bryan, of members of the cabinet actually forced out of office by the pressure of public opinion, whatever may have been the pretext upon which they resigned, that it is not going too far to say that the drift has been decided during the last generation towards reducing to a form the undoubted legal independence of the President in this matter. As to the President himself we have only to imagine an extreme case in which the will of the nation should unmistakably declare itself against a policy desired by him to be convinced that he would be obliged to abandon it. By this is not meant the will of the political party opposed to the President's own, however loudly expressed, for this, so long as it is this only, he has the right to disregard, nor is it meant that the President is cut off from an attempt to educate the nation up to a policy which at the moment he is not trying to press, but it does mean that we have practically reached a point in our constitutional development where the President would never insist upon carrying

through a policy against which the convinced will of the nation clearly declared. And every American will understand at once that the President would know what that will is and act upon it without the necessity of any congressional action.

And it is this, the convinced will of the nation, that we must regard as the final authority in any international alliance, whatever form that alliance may take. This is something behind which no form of international government can go. This is as true of an alliance with an elaborate and written constitution, which attempts to vest in a central body a power of coercion, as of a mere understanding between nations which rests upon common ideals of conduct and policy and is managed by conference. The living forces of growth in a democratic world will make over any written constitution to suit themselves, even of a world league, as the constitution of the United States has been made over in so many ways without formal amendment.

And what could be the practical operation of any plan with minutely worked out constitution? What could be the force by which

it would do its work and which would enable it to maintain any power with which it might be invested? Before we can make any secure advance to a solution of the problem of a workable international union, it must be recognized that the binding force of any alliance cannot be the right of coercion bestowed by legislation or by treaty upon a central body, but the common moral force, the moral unity of ideal and purpose, which must underlie any form which ingenuity can devise. A nation, a member of an imperial or a world alliance, cannot be coerced except by the force of opinion. Coercion by physical force would be the beginning of suicide. The nation which will not agree to the common judgment of other nations, which will not join in common action, by its refusal declares its independence and throws itself out of the world alliance. In other words it declares that it does not share in the common ideals and standards of conduct on which alone such an alliance can be securely based and therefore that it is not rightfully a member of it. A league which must maintain itself by a constant show of force is not worth having as a league of peace. It may

be worth having for other reasons, but it would make no improvement upon an offensive and defensive alliance formed by a group of nations to prevent other nations from carrying out hostile intentions. That is indeed all that it would be, a new Holy Alliance, though it might be hoped with more fidelity to its high ambitions than Alexander I.'s. If a league is to rise above this level, it must do so because it is based upon and sustained by something higher than a code of laws. It is because present experience gives rise to the hope that such higher ideals and standards are shared by many nations that we may believe that a real alliance for future peace is possible. If they are not so shared, then again we must fall back upon the artificial methods of treaties and law codes as the best that we can do until they do rise. In that case, if an international league should create an executive in official and permanent form, but without parliamentary responsibility, some corresponding official form of removal might be necessary. For this purpose probably an adaptation of the recall would be the most practicable, as in Art. V. of the Articles of



Confederation of the United States adopted in 1778.

But it is to be hoped that the dangers of this method may be avoided. The inveterate slowness of the mind to get out of the ruts which time has made is shown in the fact that nine tenths of the discussion of an international alliance for peace is full of elaborate schemes of treaties and constitutions, of vested powers in parliaments and courts and cabinets. These are all survivals of a time out of which the war has swiftly brought us. They fail to recognize the fact that all things have been made new, and that we are now gathering in a day the harvest of a century since the democratic movement began. How plain is the fact, if we will but see it, that the great international alliance which now exists, which is managing the common affairs of nations on a scale never before thought possible, exists by virtue of no creative treaties or elaborate agreements, and that it is making the machinery of its operation as it goes on with its task.

Of such enormous possible influence upon the organization of international affairs is this fact that the future historian is likely to

regard it as one of the greatest advances gained from the war. It needs indeed very little change in the machinery now in use for the management of the common policy of the widest combination of nations ever brought together to adapt it to their common policies of peace. For though it is the stress of war no doubt which has created the new machinery, it is clear that it may be adapted to other ends. And if the machinery is new, it must not be overlooked that it is also a new age and a new world upon which all nations will enter with the close of the war. What we are called upon now to see is how naturally and completely the new machinery we are evolving meets the demands of the new world after the war. The problem of a union in a common international policy is already almost solved. To all intents and purposes such a union exists today with the necessary machinery. Only the slightest adjustment is necessary, mainly in the way of reaching an understanding, not in inventing forms. The largest reshaping of existing conditions, whatever be the outcome, seems to be demanded of the British Empire.

The new machinery marks the way of the

future and it also solves the problem of responsibility. It indicates clearly that the scheme for a cabinet of five members, with definitely assigned portfolios of foreign affairs, finances, army, navy, and colonies, which the most recent and carefully made proposal for the federation of the British Empire calls for, is not necessary, even for effective responsibility. Such a plan goes with the idea of internal government in elaborate detail. It is based upon the theory that such internal government must be provided for. If it be true that the main purpose of federation is unity of external policy, not internal regulation, it follows that such a cabinet is as unnecessary and out of place as an imperial parliament. The astonishing development of the council method for the management of all sorts of interests, and of international conference on a scale never before attempted, the gradual evolution of the war council of all the allies with universal public approval, and a disposition to put under its control affairs of world-wide import, show what should take the place of a cabinet, and events have proved that the responsibility of the council is real and immediate. It is exactly

the responsibility of the American executive. Mr. Lloyd George certainly learned, as a consequence of his famous Paris speech, that membership in a council conference was not free from responsibility of a very effective kind, and it will not be forgotten that earlier still the conference proposal of an international trade boycott of Germany after the war disappeared from view because of general disapproval.

If the British Empire, as it exists at present, could advance to a practical, not a merely sentimental, recognition of the fact that it is a commonwealth of nations and could bring itself to act in international relations in view of the fact, the problem of federation, of such federation as is necessary, would be almost instantly solved. It would be seen at once that the proper method of operation is not legislation but conference and that an elaborate machinery of parliament and cabinet need not be provided, but that the far simpler allied council would serve every purpose. The transformation of the British Empire actually into a commonwealth of nations would also render at once the problem of America's joining with it in a common

international policy far easier of solution. To join in some arrangement however simple for a common policy with the British Empire as that has been historically known to us will seem to many a doubtful and difficult thing to do. To join with six English-speaking nations, standing upon a common footing of interest and influence, which are all alike peers of ours, would be a different matter.

## II

IF the conclusions which have been reached in the first part of this paper are sound, it is impossible to exaggerate the importance of the practical steps within the British Empire which are there urged. If we consider the fact that the apparent balance of probabilities in the opinion of the world today in the matter of a league of peace inclines against the practicability of the plan, it is hardly too much to say that the speedy formation of such a league, successful in operation and commanding the adhesion of non-English-speaking nations, depends upon the demonstration of two things, which can at present be made by the English-speaking nations alone: that narrow traditional feelings, growing out of local nationalism, can be cordially laid aside in favor of international union, and that adequate machinery already exists to secure the successful operation of a league of nations. It is a prime necessity of the situation that a demonstration of these facts



should be made, not in words, in argument and exhortation, but in the hard logic of the actual existence and operation of a league of nations.

It is not strange that the world is skeptical. The transformation which would be wrought in human affairs by an effective league for permanent peace would be greater than any that has taken place since the beginning of history. There would seem to be required almost a re-making of human nature. War, conquest, selfish expansion of national interests at the expense of neighbors, dreams of empire and world dominion, these have been the exclusive rule, and books of history have found almost nothing else to record than an account of these strifes. No evidence has yet been presented by any nation, at least outside of words, or by any body of men of controlling influence, that a decisive change has taken place in these elemental feelings and ambitions. To propose to transform all this at once seems absurd, and especially so, immediately after the worst exhibition of these savage passions since the world considered itself civilized. We must acknowledge that most Continental statesmen do



not believe in the possibility. We should expect the earliest and fullest agreement with us from the French, but leaders of France have frankly said they are not interested in the plan. If it be true that many statesmen of the Continent have now expressed themselves as in agreement with the ideal of a league of peace, it must nevertheless be recognized that their conversion is recent, and that upon the practical side, if any attempt is made to formulate details in the constitution of the league, there are numerous grounds for grave doubts as to the harmony which is necessary to any satisfactory result. Still more significant is the fact that among us, and even among the avowed supporters of a league of peace, the belief is freely expressed that future war cannot be prevented, that the utmost that can be hoped for is to make it difficult and more than ever dangerous. This opinion is not merely significant of what is believed possible, but it also betrays a frame of mind which would make it easy to give up the whole undertaking in the face of practical difficulties which may look serious. If we are to get what we really need, if we are not to be satisfied with an

artificial and mechanical league, drawing its only life from treaties and maintained only by armies, if we are to attain to a league which is the expression of common moral ideals and to a sure conviction of success, what is imperatively demanded is an object lesson, an actual instance of such a league on a large scale, among nations, with practical machinery that does its work. The Anglo-Saxon nations at the present moment almost furnish the required example. All that is lacking is that the Anglo-Saxon union should be put into definite, visible form, so that the most skeptical cannot doubt its existence. The comparatively slight changes which have been urged in the first part of this paper would bring about this result, and I repeat that the necessary beginning obviously rests with the British Empire.

In the meantime so great practical preparation for the extinction of war has been made as would not five years ago have been believed possible. The experience of war has done that. The whole civilized world is convinced, intellectually at least, that war is a thing that ought not to occur again; that in our stage of civilization it is out of place,

out of date; that it belongs to a lower stage which we have left behind us. To this conviction the Germans have, perhaps providentially, greatly contributed by their reversion to barbarism as a logical outcome of the war spirit. There could have been no more convincing demonstration of where war belongs in the stages of human progress than they have made. We know that it does not belong where we belong. Even professional soldiers, whose whole life work and study is war and the preparation for war, share this conviction, if they have been brought into personal contact with war as German science conducts it. I am not saying that they are convinced that no more wars will occur, but that war ought to be as obsolete in our civilization as totems and matriarchy. This conviction in the minds of a good many men is undoubtedly latent. It is not very consciously held at the moment. But it is held, and it can easily be called out, and it will prove a tremendous accession of force to any plan of permanent peace that promises to be workable.

A plan of permanent peace that promises to be workable is what this present crisis in

human progress imperatively demands and demands at once. I do not say that if this opportunity is lost no other will ever be given. That would be absurd. It is inconceivable that civilization should go on much longer without devising some permanent security against war. What I wish to insist strongly upon is that we do now have the opportunity, and that it is the height of folly to run all risks involved in delay for another generation or two. The disposition of the world at the close of the war, whether it is wholly conscious of it or not, ought to be seized upon to make this great advance certain. But who is going to do it; how is it going to be done? It is certain that no Continental nation will take the lead. There is no movement of significance in any one of them towards this step; no leader of influence has declared an intention of the kind. The whole responsibility, in this crisis in the face of this opportunity, rests upon the English-speaking nations. If they allow the chance to pass by, the possibility is lost for the world for how long no one can say.

In spite of the clearness with which this situation appears to be revealed, I think we

are forced to confess that the mass of the people of the English-speaking nations do not realize the responsibility put upon them by the present opportunity to prevent the recurrence of war, when combined with the backwardness of other nations to act. Men in high position in both the chief Anglo-Saxon nations have declared themselves in favor of a league of peace, but there is not the slightest evidence which has become public that any actual steps have been taken towards that end or any practicable plan formed. The only plans that have been proposed are the work of private societies or individuals, and they are all of the type of treaties and constitutions and law codes, a type of international organization which ought to be regarded as obsolete, or at most as only a last resort. These plans would all depend for any success they might have upon the existence of common moral standards and ideals of conduct among the nations. If such standards do not exist, constitutions and codes could only be enforced by war, and if they do exist, a law code is unnecessary and a hindrance. Our responsibility is not to be met in that way and, if we have nothing

better to offer, the opportunity is not likely to result in important permanent gain.

Whether, however, we realize the fact or not, whether we are willing to act upon it or not, we have, I venture to assert, the situation in our hands. Clear evidence, open, frank, and unmistakable, presented to all the world, that the seven Anglo-Saxon nations and their dependencies have banded themselves together in a league of peace, a commonwealth of nations, to have no more war among themselves, to lay aside forever all ambition of imperial domination, to pursue in their relations with all other nations a common policy of justice and fairness, and to throw the combined weight of their resources upon the side of justice and fairness wherever in the world wrong is threatened—plain proof that such a commonwealth does really exist would rally to its support all the latent conviction and passionate desire in every other nation. I am not asserting that this way of getting at a world league of peace might not leave remaining for some time the possibility of war, or of a threat of war, as the only means to peace. There would be very little probability of



actual war, but a possibility must be admitted. I do affirm with the deepest conviction that this is the easiest and shortest road now open to the world to the extinction of war. And I do affirm again that the Anglo-Saxon nations are now so nearly in a position to offer this clear proof that only the slightest changes are needed to make their union an actual and evident fact.

Let us see how the probabilities shape themselves considered from the standpoint of practical facts. In the first place it is a necessary preliminary that the world should be convinced of the sincerity of our professions. We may to a considerable extent take it for granted that this will be the case, though we should not overlook the fact that there will be difficulties here. To be honest we must confess that the past history of both the great branches of the Anglo-Saxon race justifies some suspicion. It is especially true that we have given other nations ample grounds on which to suspect our policy in just that particular which has brought about so great an alliance against the Germans—imperial expansion. It is not possible for us to change our past record, but never before



was there offered to any people so great an opportunity to prove beyond the possibility of doubt that it had forsaken its past as will be offered to the Anglo-Saxon race at the close of this war. The imperial spoils that might be ours for the taking are so enormous, the consent of the world would be so easily given, that renunciation can be attributed to one motive only, and no more impressive proof could be furnished. I am assuming that we shall make that renunciation and that is surely the belief of us all. We are too deeply pledged by the words of our leaders which we have unanimously applauded to do otherwise.

It is going to be somewhat more difficult for us to remove all suspicion of our policy in the matter of economic freedom, and equality, and our official utterances on this point have not been so clear and unanimous. Prediction about it may be somewhat rash, but we may feel sure that, if the event proves that the sacrifice of economic monopoly or the leveling of economic barriers is necessary within a commonwealth of nations framed for peace, we shall succeed in persuading ourselves to consent. Easiest of all will it be for us to be true to our professions in regard

to the spread of democratic institutions. It will be so perfectly clear even to the citizens of recent autocracies that peace can be secure only in a democratic world that there is not likely to be any temptation for us to forget what we have said. Nor is our past in this respect open to much question. The spread of democratic government anywhere in the world has always had our sympathy and support. It is certain that if we are going to lead we must make our intentions in these three particulars clear beyond all question and, though it may be presumptuous to affirm it, we have some right to trust ourselves to do so. If we can, the rest of mankind will not hesitate to follow.

If the world is convinced of the honesty of our intentions, it must next be convinced that the plan which we propose is workable. Such a conviction is absolutely essential to the adoption of the plan. The most serious obstacle in the way of a league of peace today and in the future is the belief on the part of practical statesmen that it will not work in practice. No proposed league that does not furnish good evidence of its practicality is

going to be adopted by any number of nations except under some form of compulsion. One that does furnish such evidence is sure, so far as human foresight can predict, to rally to itself the support of the civilized world and turn the current of history towards permanent peace. This is exactly what the Anglo-Saxon race has to offer, a practical, working plan, successfully operating in a real commonwealth of nations, and this is why the comparatively slight changes which have been suggested above are so enormously important just now, to furnish the proof in the clearest and most convincing form of an existing, smoothly acting league of nations with all the necessary machinery in full operation.

Let us suppose that the Anglo-Saxon union has clearly made the required proof and invites the association of other nations, what practical result can be expected to follow? First without question the immediate adhesion of France and Italy. It may be that the statesmen and politicians of neither country are ready to lead or at present even interested. It may be that some of them still entertain hopes of expansion or revenge which

could not be realized in such a plan. But if there were held up before the people of those countries a living example of a league of peace, simple in character and promising of results, beyond a doubt there is a latent public opinion and conviction in both nations which would sweep them into line with us at once. About Japan there may be more doubt but, if we may trust to public professions and have confidence in the reality of her apparent progress, as we probably should, she would not be far behind. It is highly probable that before the matter had gone so far as this, the minor European nations, which have not taken part in the war, and some at least of the Latin-American nations, would declare themselves ready to join in the plan. There remains the problem of Russia and the Central Powers. About Russia no one can make a confident prediction, but there are two possibilities which seem to cover the present question. If a genuinely democratic government can be formed in Russia, which establishes internal order, its adhesion will be certain. No democratic government, in the condition in which the Russian would be left, could do otherwise than welcome the support

and assistance which would come from a league of peace. If there is no prospect of stable government and domestic order, Russia must be in some form a subject of the League's protection and tutelage. Exactly the same two possibilities exist in the case of the Central Powers. The hope of the future lies in the rise of stable democracies in these lands and, if they do arise, there is no serious problem or room for doubt as to where they will stand. If they do not arise, there will be problems and serious ones, but problems whose very existence will be unanswerable argument for a league of peace. This is the catalogue to all intents and purposes of the whole world. If the demonstration of the working practicability of a commonwealth of nations can be made for the world by the Anglo-Saxon nations, the world, the mass of mankind, the deciding force of democracies, is eager to be convinced and will respond.

What this paper advocates is clearly that the Anglo-Saxon nation should go on to adopt this method of shaping their international policy, among themselves and so far as their power extends, whether other nations will or not. Unmistakable evidence that this

was going to be done would have enormous influence upon all the diplomacy of the end of the war period. But it would have more influence than that, for it is by no means an unimportant consideration that the many objections which have been made against the formation of a league of peace in advance of the consent of other nations, particularly of the enemy countries, have no force against a league of the kind here described. A league which does not propose an elaborate scheme for binding the future action of nations, which does not draw up a list of things which nations may or may not do, nor of penalties and rules for their enforcement, deprives outside nations of no essential privilege by its formation in advance of their consent. No nation which is invited to join a league having no more complicated constitution than an engagement to settle future questions as they arise by a method of conference and councils can feel that it has been unjustly deprived of a vote which it would like to have used against some feature of the plan. It is the attempt to settle questions before they arise, to determine what action shall be taken in every set of circumstances, that makes it



seem unfair and impolitic not to give every nation a voice in shaping the plan.

Contrast the ease with which such a league of peace as has been here advocated would come into existence, requiring only the simple machinery of councils and conference under a general agreement which is also based on common moral convictions and has been already abundantly tested by actual use during the stress of the greatest war that ever has been or is likely ever to be—contrast the ease of such a creation with the endless debates over clauses and stipulations and exemptions which the formation of a league by treaty would inevitably call forth. If the British Parliament in a formal Act will declare the present Imperial War Cabinet permanent for all imperial questions of domestic or foreign policy, and will do it in such a way as to make it clear that an equal proportionate voice and vote is secured to the representatives of the Dominions with those of the British Isles, the necessary first step and the longest step towards the greater result will have been taken. It may be that there is some better form for such a constructive declaration to take than an Act of Parlia-

ment. The form is a matter of indifference. What is essential is that in some form it should be made clear to the world that in the organization of the British Empire this method of deciding questions of policy has been made permanently constitutional. In the exigency of the present time the world should not be left to find that fact out by inference from accumulating cases. There is no time for the slow process of induction. The foundation of the world league of peace cannot be laid too quickly nor made too plain to the sight of every man. It is as an object lesson that its work must be done, and as an object lesson it must be able to convince the world of its existence, of its purpose, and of the method of its action. Given this, with the instant and universal remembrance of the Allied War Council and its constitution and what it has done in directing the common policy of four great nations and many smaller ones, the conclusion as to the form and machinery of a world league of peace is too immediate to be avoided, and the method of formation will be seen to be so easy that its adoption will be almost spontaneous.

I am of course assuming that on the for-

mation of an Imperial Cabinet of the kind described to determine the foreign policy of the British Empire, the United States would be willing to make known its readiness to enter with other nations into an application of the same method to the decision of all world questions. I am perhaps assuming too much, but I think not. Any careful student of the drift of public opinion during the past twenty years in the two branches of the Anglo-Saxon race must be convinced that our ideas regarding foreign policy and international duties and relations are already practically the same. It is perhaps still necessary that this fundamental fact should become generally known to the mass of our people. Undoubtedly there is more need of this revelation in the United States than in the British Empire, and undoubtedly it is also on the way. This is one reason why the reorganization of the British Empire would have so decisive an influence at the present time through its effect upon American opinion. With a general conviction of our common intentions and purposes, it is not pure idealism to believe that Americans will be ready not merely for a world league of peace of

the kind described but also, as a preliminary step for a method of common councils and conference with the Imperial Cabinet to fix upon a common Anglo-Saxon foreign policy. If that fact is made evident to the world, and the association of other nations is invited, the results described above will certainly follow.

In spite of the effort in the first part of this paper to make clear the democratic character of an Imperial Cabinet system and the certainty of its control by public opinion, I fear the constant recurrence of objection from devotion to the traditional British constitution and a feeling that a more obvious form of ministerial responsibility is necessary. I beg the objector to consider again the ways by which today public opinion brings itself to bear upon the government; to remember that every member of the Imperial Cabinet is at home a responsible minister, in the majority of cases a Prime Minister, and that he will be even more sharply held to answer for his imperial commitments than for his domestic measures; and finally to reflect carefully upon the fact that the function of an Imperial Cabinet is not legislation but the direction of policy, and that to this function in the his-

tory of the British constitution Parliamentary responsibility has only indirectly applied. Most conclusive of all with reference to an understanding of the democratic character of the league will be a study of the methods by which public opinion at present makes itself known and controls the conduct of those who legislate for it and carry out its policy. They foreshadow the methods of the final democracy and are sufficient for all its purposes.





Federal Government: its  
Function and Method



## FEDERAL GOVERNMENT: ITS FUNCTION AND METHOD

OURS is an age of great empires, autocratic or democratic. As the world has grown small through the tendency of modern invention to annihilate space and time, the area embraced in a single political government has tended to grow larger. The small state has steadily lost international significance. A few great states have already parceled out the earth between them or are reaching out with conscious ambition to found great empires by fastening their control upon such lesser territories as are still unabsorbed. In one fateful case the world has been thrown into war because a nation of immense military strength came to the serious conclusion that unless it could build up a great dominion for itself there could be nothing before it in the history of the future but a provincial existence.

But the great empire presents a problem in government which most small states have

never had to face. Given the actual physical geography of the earth and the way it has been occupied by the tribes of men, it is not possible to construct a great empire which is homogeneous either in physical conditions or in population. On the one hand great size means varying conditions of climate, productivity, natural resources, accessibility, and all those conditions which go to make the widely divergent, economic interests of separate groups of men. On these grounds they are often seemingly opposed even when there is no racial or national opposition between them. On the other hand great size means the inclusion of racial differences and all the incitements of strife which racial difference promotes: hereditary fears, hatreds, and hostilities, and remembrance of oppression or injustice real or fancied. It means cherished elements of civilization which are not alike, language and national literature, religion or ecclesiastical relationship, law and custom, things often most tenaciously held, especially if they are survivals of a former independence. The stage of civilization itself indeed often puts one race above another, in its own esteem at least, or perhaps one portion of

the empire above another, and leads in one to contempt and in the other to bitter feelings of humiliation. The whole long list of barriers which hold peoples apart can hardly be catalogued here, and it is not necessary. Familiar history is full of instances of the desperate struggle of the small group, once independent, against absorption in the larger which has overcome it. This is the inevitable problem of the great empire, the problem of absorption, of unifying its population and making it homogeneous. Unless it can be solved no nation corresponding to its territory can be created, under any of the older systems of government, and no safe permanence secured. The same problem is of course possible in a state which is comparatively speaking of small area, if it has been formed by the union of different racial groups under one more powerful than the others. Defeat and subjection may be as difficult to forget as in a great empire, and methods by which revolt is suppressed or law administered may keep hostility alive. Even if union with a stronger nationality has occurred without conquest, there may be interests that seem discordant or more artificial discriminations

which prevent the growth of a new and homogeneous nation.

The autocracy is tempted to solve this problem by sharp and speedy methods. It seems easy to believe that force thoroughly applied and for a long enough time will break down the most obstinate resistance and cause a subject group to disappear in the body of its conquerors. Foreign language, law, customs, and religion even, have been imposed upon a subject population in the effort to absorb them, and sometimes whole tribes have been violently removed from their original homes and settled among others for the same purpose. In a somewhat milder form of the same plan, colonies of the conquerors have been established on lands that once belonged to the conquered to serve as an absorbing force. Almost every one of these means, for example, was employed by Charlemagne in the course of a generation in his effort to force the Franco-Roman civilization upon the Saxons of North Germany and so to make them contented subjects of his empire. It has taken the world many centuries to find out that methods of this kind usually defeat themselves and that they are



rarely successful unless they are ruthlessly carried out to actual slavery or virtual extermination. Modern autocracies have hesitated to go so far and have settled down, like Austria and Russia, to get along as well as possible with an unsolved, or only half solved, problem, or like Prussia in Poland and Alsace-Lorraine to half-hearted attempts at old oppressions which are sure to fail and only serve to keep exasperation alive.

It has been reserved to the Anglo-Saxon race to be the first to demonstrate the possibility of a great empire, embracing wide varieties of condition and interest, but maintaining a single, firm, and everywhere efficient government while leaving all distinct divisions independent but absorbed in the national whole, in which they have their proper voice and share. This is the democratic solution of the problem, and this is federal government.

Federal government then is a form of organization for the state intended as its chief object to overcome a rather wide range of difficulties standing in the way of national union. In a single word, its distinguishing characteristic is that out of a mass of differing, perhaps conflicting, local units, it forms

a central government, strong, united, and powerful in all common and external matters, without in any way interfering with the freedom of local conditions, interests, and even prejudices to pursue their own course as they will. In a situation where a group of contiguous communities, like the original thirteen colonies of America, having important common interests, present nevertheless wide varieties of local civilization, economic condition, or deeply felt racial or religious peculiarities, which make union in necessary common efforts difficult and possibly threaten even open hostilities, federal government is, as the physicians say, indicated, is the natural and normal remedy.

In somewhat similar conditions, where a state government already existing has embraced within itself different varieties of race or interest which are restless, discontented, and troublesome, the natural way to local content and national strength is through federation. Such groups of communities, whether large or small, are held within a narrow orbit by natural or historical reasons. They therefore cannot be completely independent of one another and may even be

bound closely together in some interests. At the same time there may be other interests that keep them apart and awaken jealousies and ill-feeling which tend rapidly to increase and to swamp the influences that would draw them together. In such cases federal government comes to the aid of union by removing the causes of mutual distrust and allowing the forces that make for a common national life free opportunity. For if the fear of the local unit that cherished peculiarities or characteristics of its own are to be destroyed, or local interests sacrificed against its will, is removed, there is nothing to stand in the way of the constantly multiplying and strengthening motives of union. Federal government then must be called a political expedient. Its purpose is to secure a strong general government where without it no government at all is possible or where a weakened one results.

There are, however, other things which must be made clear. The word "federal" is too broad a word. It carries with it applications which are correct enough, regard being had to its derivation and historical use, but which are so widely different from

each other that they confuse the mind and prevent us from seeing clearly just what was the great service of the Anglo-Saxon race in solving the problem of imperial organization. A federal union historically may be almost any kind of a bond. It may be one which vests all real authority in the central government, leaving the local units with hardly more independence than the American county, to which the present union of South Africa approaches in character. At the other extreme it may be one in which the local units retain all really effective power and leave the central government hardly more than a name to exist, like the United States under the Articles of Confederation. But neither of these extremes really solves the problem of imperial organization. If it is found, when the experiment of constitution making is tried, that a unitary central government can be formed, absorbing the local units into one unified and undivided whole, there was really no problem to be solved, once the case was clearly understood. If only the form of a central government can be established without real power, the problem is left for solution to some future

time. The Anglo-Saxon contribution consisted in devising a method of federal union which vested supreme powers in the central government and left supreme powers in the possession of the local units. The practical problem before the thirteen colonies in the constitutional convention of 1787 was to fix upon the dividing line between one government and the other, to lay down the field instructions for running it, and to devise the best means of maintaining it against infraction. It is not necessary that the line should be drawn exactly where the thirteen colonies drew it. Each case must be determined by its own peculiar relation of the forces of union and disunion to one another. This much, however, is beyond all contradiction that, if a really serious problem of union exists, and if that problem is going to be solved so that it disappears into the realm of past history, it must be solved by the formation of a federal union, that is by confiding valid authorities to the central government and leaving equally valid authorities in the hands of the local units.

**An Expedient.** Federal government is then an expedient in political organization.

It is adopted for the sake of some further end which it secures better than another form, not as an end sought for itself. Indeed it is hardly possible to say that it is an end in government at all, since it is rather a method of government adaptable to any form from an almost untempered absolutism to an ideal democracy. It is a form of organization for any kind of a state, a means of carrying on any kind of government. The adoption of a federal system by a state already existing requires no revolution. It demands no change in the type or the spirit of the government either of the state as a whole or of any of the units of which it is composed. The adoption of a federal constitution for the German Empire created a new state because no union of all the German states had existed before, but the type of government which it established was that with which most Germans were already familiar—the practical absolutism, and no state in the Empire was compelled to change its government in entering it whether it was a kingdom like Bavaria or a free city like Hamburg. The republic of Switzerland could be admitted as a state of the German Empire without chang-



ing either the free democracy of its units or its general federal constitution.

Federal government is then hardly a type of government which men are likely to idealize, which they would strive to put in place of another as a more perfect form or which they would desire for its own sake. Men will idealize a king for instance and stand ready to die for his throne when threatened by a revolution as they will for a republic in danger from an oligarchy or from a military despotism. Men are not likely to do this for federal government. The American Civil War was not fought in defence of federal government since both contending governments were alike federal, and the Confederate States in one respect, in the denial of the right of secession, had made a stronger federation than the older Union. The same conclusion is also to be drawn from the fact that the victorious party in the moment of success sinned grievously against the principle of federal government in forcing upon the South the Fifteenth Amendment to the constitution making negro suffrage compulsory. That party had in other words no idea that it was federal government for which it

had been fighting. The American Civil War was fought to maintain the union, or more accurately expressed it was fought to preserve a genuine national existence which had been more or less unconsciously forming during the generations since the original federation had brought together the undeveloped possibilities of national life. The Civil War was of course evidence that the formation of the nation was still incomplete, and the same fact was shown in some of the legislation of the reconstruction period, like that cited above. But more instructive for every purpose is the revelation which the gigantic and devoted effort of the North clearly makes that the process of creating a true nation had advanced many stages beyond the point of 1787. That is, to repeat, federal government is chosen not for itself as an ideal of government but for a desired end which it will accomplish in the existing situation; and the American Civil War shows in one most dramatic and striking case the successful accomplishment of the end for which the federal constitution was adopted in 1788—the formation of a real nation from thirteen disunited and jealous communities. To pre-

serve this nation from dividing into two was the motive of the North and not to preserve any particular type of government, not even that which had made the nation possible.

These introductory paragraphs have stated in general terms the chief purpose of federation, the way in which it serves that purpose, and its relation to other types of government. They have hinted, not obscurely I hope, at certain misapprehensions of its character which may stand in the way of its adoption in some cases where it might settle serious difficulties. It remains to consider these suggestions in other lights and in more detail.

#### **As Extension of Local Self-Government.**

Federal government in its method of operation is an extension of the principle of local self-government, familiarly practiced for centuries in all Anglo-Saxon communities, beyond the sphere of local government, in the narrow sense of that term and as usually understood, into the sphere which is commonly considered to belong exclusively to the general government of the whole country. In other words the province of the general government is cut into and a certain part of

it assigned to a local unit. Or it would be more accurate to say, as I shall explain later, that the field within which certain functions commonly ascribed to a central government are exercised is divided and a locally organized unit now exercises some of them within its sphere, while the same functions continue to be exercised by the central government in a different sphere. This is no more than to say that the division of authority familiar to us between town, borough, and county government on one side, and state or national on the other, is carried one stage farther. If this fact can be comprehended with all its bearings, many difficulties in the way of understanding what federal government is in character and how it works will disappear.

I am not intending to assert that historically this was the origin of the method by which federal government is operated practically. It has been recently shown by an American scholar in a conclusive investigation, with special reference to the American colonies, that in the British Empire as it existed in 1765 a division of the fields of authority between the general and local, between the empire and the colony, already

existed to a sufficient extent to have furnished the working method of a federation, if only its exact meaning had been clearly understood and its application to the problem of the time clearly seen. So convinced is he of the validity of his conclusion that he goes so far as to say that "Britain had a working federal empire by the middle of the eighteenth century"; that she "was the most considerable member of a federal state"; and that "if the imperial order could have been frozen, petrified, in the form that time had made for it, the British Empire would have been legally a federal empire." In saying this he goes somewhat too far. The division of powers which he so clearly points out between the empire and the thirteen colonies has continued as the basis of the imperial government to the present day; it has indeed been more extensively and distinctly carried out in practice. In that sense the form of the empire of 1765 has been frozen; in more modern times it has even been expressed in law, embodied in great constitutional statutes like the British North America Act. But the empire of today is not a federation. More is necessary to a feder-

ation than a division of the fields of government. There must be a league, a *foedus*, so that the local units, wholly independent in the sphere assigned to them, constitute by their union the central government, whether they carry it on by their united action as units, or through their individual citizens as individual citizens of the union, or in both these ways together. There can be no other kind of central government for a federation—no central, or portion of the central, government which is outside of or above the combined units and able to reach binding decisions in which they have had no share. A government which is able to adopt a policy which must be adhered to by local units, which have had no voice in adopting it, is imperial not federal. It is so far forth autocratic, no matter how democratic it may be in other respects; and a federation, as a federation (that is, in relation to the units which constitute it), cannot be an autocracy, however autocratic the central government may be with reference to the individual citizens of the state. It is a different matter, however, if we are seeking for the origin of the method by which it was found possible



to make sure that a powerful central government of combined units should be practically successful, while leaving the local units fully sovereign in their own field. We must then say that it has now been shown that in the background of the discussions, which between 1765 and 1789 solved the problem, there was a more or less conscious knowledge of such a division of powers already working with success in the British Empire.

Historically it does not seem to me likely, whatever we may say as to the influence of the practical division of power in the British Empire of 1765, that we can exclude the Anglo-Saxon system of local self-government from some influence also upon the discovery of the method of operating a federal government. Certainly in the case of the first modern example, and still in many ways the most typical example, of federal government as a practical success, the United States of America, the new government which was formed was directly built upon a familiar system of local self-government already existing in the colonies. In saying this I refer not merely to the independence of all the others which each colony enjoyed in the

management of its own affairs. This historical independence of each colony of necessity forced the framers of the constitution to find some method of dividing the powers of government between the national and the local, if an effective general government was to be formed. It was therefore of course a very important influence in determining the particular type of federation to be formed, in deciding for instance how much power should be left in the hands of the individual state under the constitution. But of equal importance as suggesting the exact path to be followed in the federating process, and also as suggesting the ease and successful operation of an actual division of the field of government between national and state authorities, was the unconscious familiarity of the delegates with the division of legislative and administrative functions between the government of the colony on one side and that of the town or county on the other. The New England town, for example, was a legislative unit whose enactments, whose by-laws or town orders, were supreme within their sphere and would be enforced by any court in the colony. It was a unit also in certain

administrative matters and had full control over poor relief, the care of highways, the choice and sphere of activities of the justice of the peace. In other colonies a similar independence in local government was possessed by the county instead of the town.

**Division of Authority.** Throughout all the colonies everybody was familiar with a division of authority between the general government of the colony which acted everywhere and the government of a local unit of smaller and subordinate area, of which there were many coördinate within the colony, whose authority was equally great within its field. It is a well-known fact that in the actual framing of the constitution in the convention experience gained at home in operating the division of authority between the general and the local was the probable source of suggestions which solved problems regarded by the delegates as difficult. A familiar example is the argument made by the Connecticut delegation for an equal representation of the states in the national senate. If the idea may not have been original with that delegation, their support of it was undoubtedly strengthened by their

personal knowledge of a similar arrangement for the towns in their home legislature. However this may be it is of the utmost importance to hold clearly in mind this fact that federal government is no more than a prolongation into the sphere of general government of the principle of local self-government with which all Anglo-Saxons are familiar. It is created by the same kind of a division of powers; it operates in the same way, each government supreme and independent within its own sphere and each acting upon all citizens alike; and it simplifies in the same way and renders easy many difficulties of practical government. When this is said, however, it must not be forgotten that it is an extension beyond the range of ordinary Anglo-Saxon self-government. It does divide the authority exercised over matters usually thought of as exclusively the business of the central government so that the management of certain of these things falls now to the government of the unit for the population of its territory. This is the fact which has led many to speak of federal government as a division of sovereignty, an idea to be discussed later.

This division of authority over subjects usually considered to belong exclusively in the sphere of the general government of the nation may perhaps best be illustrated from the case of the United States in which the assignment of what is commonly national authority to the local unit is carried as far as it is ever likely to be. In the United States the regulation of marriage and divorce is left entirely to the individual states, so that there is no general uniformity in what shall constitute the legalization of marriage, or as to the evidence by which it is to be proved within the state, or in the conditions under which divorce will be granted. It is therefore quite possible for persons to be legally married in one state and not according to the laws of another, though by interstate comity they may be so regarded. For the same reason such things have been possible as the well-known divorce colony at Reno, in Nevada, composed of the citizens of other states securing a legal residence in order to get the advantage of the easy divorce laws of that state. The forms of land titles and of conveyancing are under state control. A few years ago in one of the states, as I personally

discovered to my inconvenience, the statute *De donis* of Edward I., as taken up into the common law, was still in full force. In most states such a method of creating a virtual entail of real property by a form of words in a conveyance is made impossible by statute. The United States as a result of the first Amendment to the Constitution can set up no established church, but it is left to the individual states to do so if they will, and established churches continued in some of the states for years after the adoption of the Constitution. Even today one church might be established in New York, and another in Ohio, if the states chose to amend their present constitutions to that effect. The organization of the judicial system, under which the majority of all cases civil and criminal will be decided, is a matter for the states, and the courts may be and are organized in different ways in different states. The same thing is true of the system of public schools in which the authority of the states is supreme and independent of each other. The leaving of supreme governmental authority in such matter in the hands of the local unit for its own locality might be further il-



lustrated, but I have purposely chosen here five cases in which Scotland already enjoys its own separate system of local administration from the rest of the United Kingdom. It might indeed not be possible for Scotland to disestablish its church by its own legislative act, but it administers in all independence, as an American state would do, its distinct established church, and so also with respect to the other cases. I hardly need to say that here exists already a broad enough foundation for a federal structure with divided administration fully carried out, but I do wish to call especial attention to the fact that the smoothness with which this division is operated in practice in the United Kingdom is typical of the result which everywhere follows federation, even in such a matter as division of the legislative field.

**Division of Sovereignty.** It has been said that this division of the field of authority is a division of sovereignty. It may be so. What the final science of the state is going to decide in the case cannot be foretold, and it is perhaps presumptuous for one who has given little attention to the theoretical side of the question to attempt to answer it, but in my

opinion sovereignty, in any practical meaning of the term at least, continues undivided. There is no necessary division. If we use the term sovereignty as it is commonly used in international law—an uncontrolled independence which expresses itself in the power to form alliances, to make treaties, to declare war and make peace, to be a sovereign nation as over against all other nations—then in a federation like that of the United States the central government alone is sovereign. None of these things can be claimed for itself by any of the states. If we use the term as it is used when we speak of the ultimate source of the power which is exercised by any government, then sovereignty retains its seat undivided in the people of the whole country, not in the people of the states separately considered. This is made clear in the constitution itself. The preamble states beyond the possibility of doubt, the ultimate authority which creates the government. “We the people of the United States in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our

Posterity, do ordain and establish this Constitution for the United States of America." And it is this constitution, ordained and established by the people of the whole country, which determines the powers which the separate states may exercise and what limitations shall be placed upon them. That is to say, both state and national governments were defined and their respective parts assigned to them by an act of the people which still retains its sovereignty undivided. Later this was more expressly stated in the tenth amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." This would be the real meaning, and I am sure that it would be the explanation ultimately given, of a similar act of governmental creation in any Anglo-Saxon country.

The question whether sovereignty is divided or not in a federal government is one, however, which need not be answered for any practical purpose. Each government is sovereign within its own sphere and the division as a practical matter is a division of

spheres. We must, however, try to make the exact character and method of the division as clear as possible, for in this division is found the only method of federal operation. In words it is perhaps not possible to be more clear than in the statement just made. Federal government necessarily divides the sphere within which the authority of government is exercised. But it divides it in two ways. It assigns certain fields, or topics, of government wholly to one, and others wholly to the other. As in the examples given above, marriage and divorce and the others lie wholly within the sphere of the separate states, while alliances and treaties belong wholly to the national government. The school system is a matter for the states alone, duties on imports for the national government only. On the other hand in a large range of cases, it is not the field or subject of authority which is divided, but the field in a more physical, territorial sense, the field of the application of an authority which is equally exercised by both the state and the national government. Nearly the whole field of criminal law is an instance of this kind of division. The United States exclusively

punishes crimes against its own law, and those committed within territory which belongs to it and not to any state, as for instance in the District of Columbia. Exactly the same crimes committed within the jurisdiction of a state the national courts can do nothing with. The criminal law may be the same in both cases, the offences and the penalties identical, but one government cannot enforce the law of the other. For example, the United States could offer no satisfactory explanation, satisfactory in international law, to the Italian government complaining of the murder of certain of its citizens in lynchings in the state of Louisiana. If the state would not take action in the matter, the United States could not do so. It may be thought that this is going too far, but such a concession to state independence is no necessity of federal government and is not made in the Canadian constitution. It is on this account a particularly good illustration. Another instance is taxation in most of its forms. The national government has lately put into force an income tax which must be paid by the citizens of all states alike. Some of the states have also their own income

taxes which must be paid by the residents of those states in addition to the national tax.

Still more to the point is the disposition which is made in a federal system of the legislative and judicial powers, because they seem to us to be among the things which constitute government itself, without which government cannot exist. What we are inclined to regard as a division of the legislative function, which is almost inevitable in a federation, or of the supreme judicial power, which is of frequent occurrence, accounts undoubtedly to a large extent for the feeling that a federation must be a division of sovereignty. It is very likely also that the practical working of such a division is especially hard to understand and, when not understood, it may perhaps lend support to a feeling that to grant such powers to a local unit is to grant independence. The division of these functions is probably carried as far in the United States as any federation will carry it. There the national government possesses a sovereign legislature and a judicial system which is supreme, and each state in the Union possesses a sovereign legislature and a judicial system which is supreme. Every inhabitant



of the United States is always subject to the laws made by Congress and within the jurisdiction of the national courts, for no division of authorities shuts the central government out, in the exercise of its rights, from the territory of the state, or from the citizens dwelling there. At the same time every inhabitant is always subject to the laws made by some state and within the jurisdiction of its courts. Does it seem likely that the result will be a very tangled skein? As a matter of fact it works in practice so smoothly and automatically that in all the ordinary concerns of life no one ever thinks of asking whether the affair he has in hand is regulated by national or by state law. When it is necessary for any reason to know, the distinction is found in the vast majority of cases clear and simple both in definition and operation. This is not to say that no difficulty ever arises; no conflict of laws, no doubt as to the exact jurisdiction. These questions arise under every system, and each system creates some that are peculiar to itself. It is asserted that the peculiar difficulties which might be thought sure to arise under such an overlapping of laws and courts are not



found in actual working so numerous or so serious as to constitute an objection to federation or an obstacle to its practical success. The division works on the whole as smoothly as the legislative division between county councils and Parliament, or the judicial division between county courts and the High Court of Justice in England, though somewhat different in principle. A few simple principles and precedents early established, and a constant comity and mutual respect, have been sufficient to prevent any harmful collision either in the legislative or the judicial field. If experience has proved this to be the case in a constitution going so far in the way of division as the American does, little danger is to be apprehended from this source in other constitutions.

To repeat then: The division in legislative and judicial matters which is made in the American constitution between the general government and the state is a division of the field, rather than of the function or even of the power. Function is not affected. Power, wherever exercised, remains as complete as it can be anywhere. But the field within which the legislative power, or the judicial

power, is to be exercised is restricted on both sides. The state's power is to be exercised in the first place within certain well-marked geographical boundaries, and not outside them. It can enter into no engagements with foreign states, nor make any law valid in the territory of another state. In the second place within those boundaries there are certain fields of law, certain subjects or topics, which are withdrawn from the power of the state. No state legislature can interfere with the national monetary system which Congress has established, either by an independent coinage, by creating a paper currency of its own, or by making a different legal tender for debts even within its own boundaries. Nor can a state insist that every case in which it is itself a party shall be tried in its own courts. On the other hand no United States court can assume jurisdiction over a suit which is brought by a private person against a state. It must be tried in the courts of the state concerned. In legislation Congress can lay no duties on exports from the states, can establish no national church, and has no power to abolish the grand jury in criminal trials. Still more

important, Congress can not interfere with the laws which the states may make regulating ordinary business affairs, family relations, the inheritance of estates, the making and enforcing of contracts, the forms of conveyance, the maintenance of local peace and order, the chartering of business corporations, the organization of municipal and local government, and all the thousand and one matters which go to make up man's daily life and business. In all such matters the state law and the state courts are supreme. No case of the kind can even be appealed from a state court to the jurisdiction of the United States for review unless it can be shown that it involves a question of interpreting the national constitution, or some right under the constitution which may have been expressed in a national law. Perhaps in no better way than in such an enumeration can the kind of division which a federal system makes be illustrated, but the catalogue, if made complete, would seem to me to show no division of sovereignty, hardly what I should call a division of function, but rather a division of fields or subjects limiting the exercise of power.

One of the reasons why the overlapping of the fields of state and national governments in the United States causes so little confusion in practice is no doubt the clearness with which the dividing line was run in the constitution. If those portions of the constitution are examined in which are stated the powers of Congress and the prohibitions on Congress and on the States, it will be seen that these provisions are specific, concise, and clean-cut. No words are wasted, no construction is involved; no opportunity arising merely from the language used is left for misunderstanding, dispute, or evasion. These are characteristics of all the great Anglo-Saxon documents of the past with scarcely an exception, and the constitution, in this portion at least, is worthy of its ancestry. But this brings us to what is an essential feature of any federal system. The dividing line must be run. The division of the fields of authority which is necessary to a federation must be made, and must be made so completely with reference to all cases involved, and so clearly, that friction and difficulty in operating the government are avoided. From this necessity four things

arise which are important characteristics of actual federations. 1. The making of a federation is a deliberate and conscious act of government construction. 2. It is necessary that the given division be made a matter of record so that reference can be had to a final authority in cases of doubt or dispute. 3. It is necessary that there should reside somewhere authority which can declare finally acts of parties to the federation, or of the federal government itself, null and void because beyond the powers assigned. 4. The character of the division, the place where the dividing line is drawn in different cases, is the chief fact which constitutes the difference between federal constitutions.

**Method of Framing.** 1. The making of a federation must be a deliberate and conscious act of government construction. A federation is made, not born. It cannot grow up of itself out of an earlier different situation by a series of more or less unconscious changes, as the constitution of England was formed, so that after a lapse of time the nation finds itself living under a federation whose adoption it can assign to no specific date nor to any deliberate act of choice.

The problem to be solved by a federation shuts out any such possibility. The differing, perhaps antagonistic, conditions of local units are to be so far committed to the government of each unit for exclusive decision and control that, these conditions being eliminated from the problem, all will be willing to unite heartily in a common government. Or it may be that the problem is the existence of similar differences between the general government and local units which affect the national strength and efficiency. Either problem demands reflection and deliberation. The varying sources of conflicting interest between the local units, between them and the general government, in the particular case, very probably unlike any other case in history, must be carefully weighed and balanced. The study of another federation will be useful in general matters but will not be likely to remove special difficulties. No federal constitution can be borrowed in toto by another state. The place where the dividing line between the fields of authority should be run in each case must be determined by its own peculiarities, and it must be fixed by careful consideration.



The constitution of the United States was framed not by the national legislature but by a convention chosen for the special purpose, and the example has been followed in the case of other federations, and is the usual method of constitution making in the various American states. A constitutional convention is a natural expression of the principle of the sovereignty of the people in its American form: that the government has the scope of its action determined directly by the people and derives all its powers by specific delegation from them. The legislature cannot logically form the constitution because the constitution defines the powers of the legislature and sets limitations upon them. The logical method is that the constitution should be framed by a special assembly chosen for the particular purpose only and by an act of the people which has in view the particular constitution desired. But this is not the necessary and only method of framing a federal constitution. Especially is it not in the case of a state which vests the expression of sovereignty in its national legislature, and which recognizes no superior method of declaring the will of the people

than through the legislature. In such a state the legislature may well frame a constitution which defines its own powers and puts limitations upon them. If then it should do this under a special mandate from the nation determined by a parliamentary election, every democratic principle which the American practice seeks to protect would be sufficiently safeguarded. It is equally possible to go farther than this. A federal constitution can be framed, meeting every requirement of the case, by an imperial legislature acting for dependencies which do not yet possess the right of full national expression, as has been done in the British Empire. If in such a case the known wishes of the colonies to be federated are followed, there is no reason why a constitution so framed should not be as satisfactory in operation as any other, as indeed they have proved to be. The particular way in which a federal constitution is framed is a matter of comparative indifference so long as it is an expression of the national will. The one indispensable thing is that one be framed; that the division of the field in which power is to be exercised between the local unit and the

national government be a studied and careful act which takes intelligent and full account of the special problems to be solved.

**A Written Constitution.** 2. It is necessary that the division of the fields in which power is to be exercised should be so definitely and distinctly described in a permanent and authoritative document that reference can always be had to it for a decision without appeal as to the competence of one or the other government to act. A vesting in two different governments of supreme authorities, at the same time and over the same persons, such an overlapping of the daily functions of government, is a practical possibility, will work harmoniously and without confusion in practice, only if the line of division can be seen and known of all men. It is not likely that human foresight can imagine, or human ingenuity state the rule to cover, every case of doubtful authority which can arise, but experience shows that it is possible to do so in the great majority of cases. The doubts undetermined, and the wholly unforeseen problems that arise can be reduced to a small minimum. In the need of a permanent record of the line of division

lies such necessity as there is of written constitution. But it is clearly not necessary that in all cases the permanent record should be a formal constitution defining and describing all details for the whole government of the state. A formal constitution as distinguished from a legislative act has an air of superior authority, and from the purely democratic point of view, as a more deliberate act of the people, has something of real superiority. But this is not a necessary quality. The habitual method by which a people is accustomed to do things, rather than theory, indicates the proper form. If this is by act of the legislature and, if in history and by common consent the legislature is regarded as competent to settle and revise constitutional principles, then an act of the legislature is all sufficient either for the home government or for its dependencies.

The Australian federation, looked at with regard to what is so distinctive a characteristic of federal constitutions as the division of the fields of government action between the general and the local and their definition, is probably the most typical example of a federation yet formed. With definite refer-

ence to the experience of the United States in the same direction, the enumeration and specification of powers were made more complete, and less opportunity was left for the introduction of what might seem to be new or arbitrary distinctions on the ground of implied powers. It is a national constitution to all intents and purposes, performing the same function and as authoritative as the constitution of the United States. But it exists only in an act of the Imperial Parliament, the Commonwealth of Australia Constitution Act. The act of Parliament was, however, really framed by an Australian constitutional convention, though modified in one particular of formal importance in its passage through Parliament.

Many objections have been urged against a written constitution which seem serious in character. They are more serious in appearance than in reality. It is said that a written constitution is contrary to the spirit and historical method of Anglo-Saxon development. So far as this objection is a statement of historical fact, it is undoubtedly well founded. The English constitution of today, and the constitutions originally in-

herited by all her colonies, grew naturally into the forms they have or had with no attempt to mark out or limit in advance the powers of government, but by meeting in practical fashion each crisis as it arose. But what is equally a historical fact should not be overlooked, that the English constitution was formed in the centuries of its growth by a series of experiments. What the English nation was doing in the way of government making was something new in the history of the world. The results could not be anticipated or formulated in advance. No written constitution in the modern sense could be made. All that could be done was to record, as surely was done, successive steps in great acts of Parliament which put into written and permanent form the solution of a particular crisis. Looked at in the light of past history, what happened when the American federal government was formed or what is happening now, is a new crisis, a necessity of finding a common working platform for divergent local, and uniform national interests. The solution was and is a division of the fields of government operation and that division must be put in advance into a form



that can readily be consulted in order that it be workable at all.

But it is said that a written constitution fixes government in rigid form and hampers or prevents the natural development of the future. The English constitution, the argument declares, has reached its present degree of perfection because it has been able to advance freely in the past as the needs of the time demanded and therefore this method of determining the character of government, so successful in the past, indicates the wisest rule for the future. The argument misapprehends what a written constitution proposes to do and exaggerates its binding force. It might indeed be answered for the present purpose by saying that the constitution of a federation needs to put into written form only what is necessary to a clear record of the division of powers. But if the record of a federation takes the form of a constitution, it is not likely to stop at that point. It might be met also by saying that a federation may be formed by a legislative act if that seems preferable and that one so formed admits of easy amendment by another act of the same kind. But it is doubtful if

experience will show that this method of amendment is so easy as it seems. It is doubtful for instance if the constitution of Canada is to be amended so easily as that of the United States. It is also more than likely that federations will form themselves in the future, as the American was formed, by an act of the people superior to the legislature and defining the character of the government as a whole. What a written constitution of that kind does is to formulate the political ideas of the time as to the character and best methods of government. It is not a laboratory experiment to discover new methods for future trial. Its business is not to invent new and untried methods of government. It cannot run ahead of the judgment of its time, for if it does it will not be adopted. It is in government what codification is in law. It states in precise form what the progress of the past has left in more or less disorganized shape. It differs from a similar formulation in a statute, like the Bill of Rights of 1689, only in the method of its adoption, not at all in effect of formulation on future development. If the precise form adopted fixes government unchangeably for

the future, it will fetter the growth of the future, but it will never so fix government, either by statute or constitution, so long as the possibility of growth remains. If a nation is politically alive, its development in government will no more be checked by a written constitution than the development of law is checked by codification in a nation still legally growing. Government will be modified in the same two ways that law is modified under a code, by formal amendment, as the constitution itself provides, and by informal amendment through the force of the nation's life which changes both practice and interpretation.

It was declared by high authority ten years ago that the constitution of the United States would never again be formally amended. Since then two amendments have been easily and quickly adopted, one enlarging the powers of the general government in taxation, and the other recording the growth of democratic control in the direct election of senators. Two other amendments are now being pressed for adoption, and one of them is so rapidly being accepted by the states as to seem to show not merely that the constitution can

be easily amended when there is sufficient popular demand, but that it may even be too easily amended without due consideration of the fitness of the amendment to belong in the constitution. Less attention has been generally called to the changes in American government which have been informally made under the constitution but which are not less real and far reaching. I do not refer merely to those which have been made by judicial decision, as in the development of the doctrine of implied powers and more specifically in the control of interstate commerce. These have been often discussed. I rather refer to such a fact as the decided increase during the nineteenth century of the power of the Senate both in the general government of the country and in the control of foreign relations, giving to the Senate a power in the state far greater than was designed or foreseen by the framers of the constitution. Another instance is the growth, which can hardly be called less than revolutionary, during the past twenty-five years of the power of the executive over legislation. This latter has been so great as to bid fair to bring about al-

most the same kind of union between the legislative and executive branches that exists in the English constitution, and to depart from the ideas of Locke on the threefold division of government functions which was expressed in the original constitution. Nor is the experience of the United States alone in this matter, for other written constitutions have been subjected to conventional interpretation and effective institutions created under them without specific authorization, like the Canadian responsible cabinet. There is already experience enough to be conclusive that both the methods of making new law known to the Anglo-Saxon race, the formal and the informal, the written and the unwritten, will continue in full operation as affecting a written constitution until our institution-making power is exhausted.

A number of other objections have been urged as if they were objections against a written constitution, but when carefully examined, they are in reality only objections against specific provisions of the American constitution. Such is the argument based on the clause which forbids the passage of laws annulling the obligation of contracts.

This provision is undoubtedly felt by legislators and judges to be an obstacle in the way of legislation sometimes desired, but it is certain I think that there is no general condemnation of it among the people at large. These objections need not be considered here. The experience of the United States with several specific provisions, as well as from a lack of specific provision, comes distinctly to the advantage of new federations, and has been consciously taken into the account by Australia. The thing which should surprise us is not that the framers of the constitution made so many mistakes, but that they made so few, in marking out the limitations of government in a way along which they had no historical guide. The advocate of a written constitution can find strong ground on which to stand both in positive argument for the plan and in meeting objections to it, but it should not be overlooked that a formal constitution, laying out the whole field of government, is not necessarily called for in the creation of a federation.

**The Distribution of Powers.** 3. From the fact of a definite distribution of powers



into two fields of action in a formal and binding statement, comes the necessity that there should reside somewhere in the state authority to decide when one government or the other has overstepped the limits assigned to it, and to declare, as a final authority, that its action is for this reason null and void. No positive provision need be made for such an authority, and none was made in the constitution of the United States. It will be developed out of the necessities of the case and, if no special provision is made, will probably be assumed by the courts of law before which the great majority of such questions will naturally come. For questions will certainly arise. It is hardly possible that experience will ever bring us to a point where every possible contingency can be foreseen, and none which is new occur. It is just as unlikely that the dividing line between two spheres of government operation can be so clearly placed as to leave no room in any particular for differences of opinion. If no such difference of opinion arises between the two governments concerned, the interest of the individual who feels himself injured by an act of one or the other is certain to raise the

question of capacity to act, if by any ingenuity it can be raised. If also a constitution contains positive prohibitions of action applying to either government, some overstepping of the limits even without intention is almost certain. This situation is the explanation of the power assumed by courts in the United States to declare laws regularly passed by the legislative branch of the government to be unconstitutional and therefore null and void, so with no specific provision and even without historical precedent of any kind, it is hardly possible to doubt that the courts will assume the same power under any similar constitution. The power need not belong, however, exclusively to the courts. The constitution of Canada vests the same power with regard to the legislative acts of the provinces in the governor general and council, a provision based on experience of the reservation of colonial acts for possible disallowance by the home government and exercised of course on the advice of the responsible legal advisers of the government. But this feature of the Canadian constitution does not shut out the right of the courts to inquire in cases coming before them whether the legislation in ques-

tion exceeds the powers conferred and if so to declare it void, and the issue has been raised and settled in the courts many times since the constitution was put into force. The principle is not different in character from that of the Colonial Laws Validity Act of 1865. That statute provided that any colonial act should be deemed void if it conflicted with the provisions of an act of the imperial Parliament which was intended to apply to that colony. In a federal constitution of a different type from the American, in one framed by the legislature and subject to modification by the legislature, or in one which is made no more than a rule of action to be interpreted by the legislature, the question of constitutionality need not arise, and cannot concerning a legislative act, and no authority need exist to declare acts of the legislature void because unconstitutional. Such a constitution, however, while it may still be federal, will be less typically so, because the division of fields of action between the general and the local governments will of necessity be less complete (the general government being likely to have far the larger share) and less definitely fixed.

**Degrees of Federalization.** 4. It is in the matter just referred to, the different place at which the line is drawn between the field of the general and that of the local government, that we have arising the difference between one kind of federation and another. And the number of different kinds can scarcely be named. I have already implied that among existing federations we may regard the United States as representing one extreme, the extreme of power in the hands of the states, we may also consider the South African Union the other, of powers in the central government. The South African Union indeed goes so far towards this extreme that, though the process by which it was formed was clearly a federative process, the result is so nearly a unitary government that it can hardly be called a federation at all. It does, however, remain possible in at least one case that the Union legislature could so exceed its powers that its action would have to be declared unconstitutional by the courts. At any rate the number of variations possible between those two extremes, and the number of peculiar features which may be introduced into any given constitution, are almost infinite. The point is

one of the utmost importance because the flexibility of federalism, its ready adaptation to almost any conceivable problem of imperial organization, is one of its chief claims upon the future and a characteristic often overlooked.

Somewhere about midway between the two extremes stands the federal system of the Canadian Dominion. Much more extensive powers are granted to the central government, and especially to the central legislature, than in the American Union. But the same thing is true also, within the limits marked out for it, of the legislature of the Canadian province. As a distinguished justice of the Supreme Court of Ontario had said in a judicial decision speaking of the legislature of that province: "The Legislature within its jurisdiction can do everything which is not naturally impossible and is restrained by no rule human or divine. . . . The prohibition 'Thou shalt not steal' has no legal force upon the sovereign body, and there would be no necessity for compensation to be given." The same principle applies to the Dominion legislature, but of course in this citation the words "within its jurisdiction" are to be em-

phasized and it must not be understood to imply that acts of the legislature may not be declared void because unconstitutional, as the same jurist elsewhere points out. Powers are specifically granted to the Dominion Parliament, but not possessed by the American Congress, over the militia, banking and savings banks, promissory notes and interest, marriage and divorce, and local criminal law except the organization of the provincial courts. It was given authority to bring about uniformity of law in Ontario, Nova Scotia, and New Brunswick, but Quebec's enjoyment of French Roman law it could not interfere with. In spite of the pains taken in the Canadian constitution to draw clearly the line between the general and the local fields of action, they do still overlap and more than once the question of the competence of the Dominion Parliament to enact certain provisions has been taken to the Judicial Committee in London and once at least decided against the central government. But the general powers granted to that legislature are very wide—"to legislate for the peace, order, and good government" of the country—and seem to allow ample scope for the



development of implied powers. It is also an accepted principle of the constitution that the powers not expressly reserved to the provinces were conferred upon the Dominion government. Education is a matter for the provinces to regulate but the right is limited, for they cannot take away the privileges originally enjoyed by the schools of Roman Catholic and protestant dissenters. Another peculiarity, strange in a democratic country, a senate whose members are nominated for life by the governor general on the advice of the cabinet, is to be accounted for by the facts of past history; another, the fact that while the Dominion Parliament is of two houses, most of the provinces have only one chamber, is to be explained by recent tendencies. Altogether the Canadian constitution is a fine example, a sufficient demonstration, of the wide variety of local conditions which can be provided for and local interests which can be given the protection of full self-control under a central government which is still powerful and adequate to all demands. The flexibility of federal government, its adaptability to all imaginable conditions have no better illustration.

Another excellent example is the German Empire, for though it is not often thought of in this connection, and is of a type peculiar to itself, it is true federal government. It furnishes a striking instance of the fact that great concessions may be made to local independence without impairing the national unity or strength; indeed, it is an example of the way in which the forces of national unity work with increasing effect under a federation. The German Confederation was first formed as the result of a civil war in which a considerable number of the small German states, allied with Austria, had been defeated by Prussia. As a result several of them were directly annexed to Prussia and the others north of the Main brought into a federal union in which Prussia was the dominating state. The larger states south of the Main, Bavaria, Würtemberg, and Baden, politically and tribally unfriendly to Prussia, were not included. It was the result of the great national successes in the Franco-Prussian War of 1870 which brought these states into the union and transformed the Confederation into the Empire. But the constitution was not changed in its essential nature. The

most interesting changes are those in which concessions were granted to the south German states to overcome their reluctance to enter the Empire and their fear of the encroachments of Prussia. Bavaria, for instance, has independent control of her railroads, telegraphs, and postal service, is free from certain forms of imperial taxation, has special privileges in reference to foreign affairs, and in time of peace has entire control of her own army. In the original constitution Hamburg and Bremen were allowed to maintain free trade in the interests of their commerce, while a protectionist tariff was in force for the rest of the Empire, and such an arrangement could easily be made a feature of any federation. Würtemberg, Baden, and Saxony enjoy some of the same privileges as Bavaria, but not all, and the German constitution is clear proof that under the same central government the different states may be allowed very different powers. In practical working the special concessions made to the states have not been found to occasion difficulties and there can be no doubt but that under the imperial constitution local antagonisms have tended to disappear and the feeling of na-

tional unity grown stronger. The German constitution, as a written constitution, is interesting also in another respect for, while it has been so interpreted in practice that ministerial responsibility does not exist, its language is of such a sort that, without amendment, a change of conventional interpretation could bring in the full responsibility of the chancellor to the Reichstag. To transform the government thoroughly, however, into one of Anglo-Saxon type would require the making over of the upper house, the Bundesrath, and perhaps of the principle that the central government operates chiefly through the government of the states rather than directly upon individuals.

In the case of the thirteen American colonies, the units had always been politically independent of one another. Though possessing in common many of the most essential characteristics of a true national life, oneness of race, language, law, and political institutions and ideals, and many very important common interests, there were still equally important differences which made union difficult. There were great differences in size and population which made some

colonies fear that their local independence would be smothered if they were absorbed in a union and that with independence there would go also local peculiarities to which they were intensely devoted. There were already boundary and territorial disputes in more than one place. If there were no serious differences between them in religion itself, there were very different ideas and practices as to religious toleration and the relation of the state to the church, which seemed to them relatively of greater importance than to their descendants. And there were widely varying economic conditions which tempted one colony to take advantage of others and made the prospect of common commercial legislation greatly disliked. More than once the discord between states had come to the verge of a breach of the national peace. In many places the fear of what would follow the loss of the power to control all local matters outweighed the prospect of advantage from a united government. Their past political independence of one another they were disposed to cherish as a safeguard of liberty. In such a situation a definite and clearly expressed division of the field of government

between the national union and the local unit was necessary in order to create a national organization, and it was a very natural result that in the actual division made in the constitution the balance of power inclined to the side of the states and that all powers not directly conferred upon the central government were reserved to them. And yet the moment the constitution was put into operation state antagonisms, jealousies, and fears began to disappear and the latent forces in favor of national unity to work more strongly. They have continued to work to the present time, strengthened by the experiences of the Civil War, and it is no exaggeration to say that recent political discussions and proposed amendments to the constitution reveal the fact that serious local differences are so much things of the past that a considerable portion of the nation no longer understands what federal government is, or the special ends which it is designed to serve.

It is not the purpose of this essay to consider in detail different federal constitutions or the history of their operation. The attempt has been made to make clear the



essential qualities of federalism, its method and its function. Especially has there been emphasized the two characteristics which constitute its value as a practical system of government and indicate the mission which it may have to perform in the political organization of the future, first its flexibility and adaptability, and second the free opportunity which it gives to the natural forces of union in a state to do their work.

**Flexibility.** The first of these characteristics marks out a field for the future application of the federal method almost unlimited in extent. I have illustrated the adaptability of federalism almost solely from the cases where it has been used to form a new state and in fact in the history of the past this has been almost the only way in which it has been applied. There are, however, not a few conditions at present which indicate that it may have as great a mission in the future in the reconstruction of states. There has been already, for instance, considerable discussion of the adaptation of the principle in some form to a reorganization of the government of Great Britain. It is obvious that there would be considerable practical difficulties

in the carrying out of such a plan. Not the least serious of these is the sharply divided condition of Ireland in certain of just those historical inheritances and present antagonisms which federalism removes, if the way can be found to apply it. In a search for the way, it must never be overlooked that the history of federal government in the past indicates clearly two things. First that the size, the area and population, of a local unit in a federal system is a matter of indifference, and second that the success of the system in the great things which it can accomplish depends upon the completeness with which the local unit is relieved of all fear that outside force and outside majorities are going to interfere with its peculiarities or impose regulations upon it which it considers to be unjust. And it may perhaps be repeated that the adoption of a federal system requires no change in the type or spirit of an existing government. To one who looks at the problems of Great Britain from the outside with a practical knowledge of the working of federal government, it seems beyond dispute that domestic friction would be completely relieved, at any rate much beyond present British expectation,

and the British Parliament spared great detail of labor, by a thoroughgoing adoption of federation.

Further application of federalism, perhaps combined with proportional representation for the benefit of small groups, seems almost inevitable if the problem of the Balkans is to be solved with any hope that the solution will be permanent. Another field of equal promise is found in the reorganization of the Austrian Empire, if that is to be reorganized in a democratic sense, and not allowed to fall apart into a number of independent states. A state formed by conquest may so fall apart that reconstruction under an autocratic government is hardly possible. We have seen in recent days with astonished eyes one autocratic empire of great potential strength breaking into fragments, each seemingly disposed to go its own way without regard to any others or to the common whole. If Russia is ever to be reconstituted as a single state, it would seem as if it must be by some application of federal government. It might even be federally organized with some states Bolshevik, some social democratic, and others aristocratic, or royal even.

**Unity.** Of the second characteristic, effect upon national unity, I must repeat what has been several times said. Federal government allows a strong and united nation to form by quieting all fear in the local unit that it is going to be unjustly treated in the matter of those peculiarities in which it differs from the rest of the nation, but to which it is deeply attached, or in which it represents a different civilization or important differences of local condition. I have said that the fifteenth amendment to the American constitution was a violation of the federal principle, and it is in this particular that the statement is true. It is an undoubted historical fact that the other states of the union took advantage of the result of the Civil War to force upon the southern states a measure, negro suffrage, to which as a whole section of the country they were bitterly opposed, for which their local conditions were in no way prepared, and which could not be carried into practical operation without much local injustice. No better example than this could be devised of just the kind of action which it is the purpose of federalism to prevent, and the fact that the amendment was adopted by the majority of

the nation from a righteous motive makes the example all the better. Federal government has for its object to prevent the righteous motives of the majority from unjustly oppressing the minority and thereby strengthening historical antagonisms. No matter what the local peculiarity is, the federal system rightly administered can afford it ample protection without in any way affecting the strength and efficiency of the union government. Indeed it is beyond question that the removal of local apprehension gives free course to all the natural forces of union to operate with constantly increasing vigor, because the forces of separation and internal conflict are held in check, and that therefore it increases the strength and efficiency of the central government. History has made no lesson more clear than this and it is also of the very essence of federal government. There can be no more serious misapprehension of what federalism is and the work which it accomplishes than the belief that its adoption would weaken or break up any union already existing, or as has been said of proposed British federation "restore the conditions of the Heptarchy." The exact oppo-

site is its almost necessary and inevitable result, and this one fact; if no other, opens the wide opportunities of the future which certainly lie before the federal system of government.





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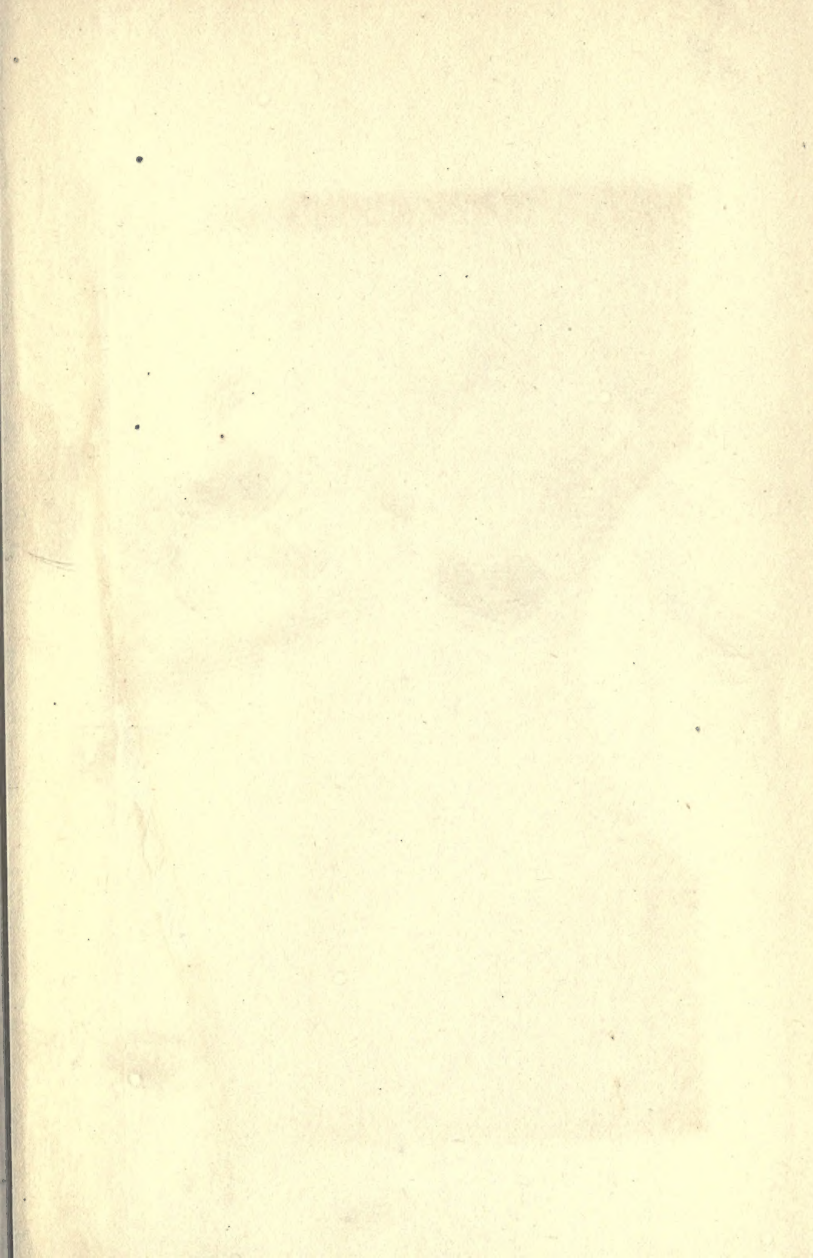
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